

## REMARKS

### State of the Claims

Claims 1-6 and 9-54 are pending. Please cancel Claims 16-54 without prejudice and withdraw them from further consideration. Claims 1-6 and 9-15 remain and stand rejected.

### 35 U.S.C. § 102(b) Rejection

Claims 1, 4-6 and 9-15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Stover (U.S. Patent No. 4,579,048).

The Examiner states that the reasons for this rejection are those from the previous office action dated February 12, 2003 (Paper No. 9). In that office action, The Examiner stated that Stover '048 discloses a system for preparing a customized brewed coffee beverage comprising delaying dilution of an extract (e.g., coffee, tea, etc.) for a time--i.e., 8 minutes. The Examiner further states that although Stover '048 discusses his dilution with regard to a tea beverage, Stover's apparatus has the capacity to fulfill the ratio of coffee extract/diluents required in Claims 7 and 8. Applicants point out that Claims 7 and 8 are no longer pending thereby making the previous contention relative to Claims 7 and 8 now moot.

According to MPEP § 2131 a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. The elements must be arranged as required by the claim.

The importance of the modifier "individually" for Applicants' invention is several. First, it speaks to a consumer's ability to customize her preferred variety of beverage from a virtually endless selection of possibilities.<sup>1</sup> Furthermore, Applicants' invention, by way of its personal customization, enables a customer to create a customized coffee beverage just prior to its consumption--such customization occurring totally within the system itself.<sup>2</sup>

Stover '048 does not teach or claim Applicants' system-contained customization. Instead, Stover '048 merely teaches automatic dilution means that lack a customer's input.<sup>3</sup> Furthermore, Stover '048 steers away from customization by providing an electrical circuit that automatically controls the flow of brewing and dilution in the apparatus, once again, without a customer's selection of a desired strength, flavor, body, etc.--i.e., without a customer's personal

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<sup>1</sup> Applicants' Specification at page 4, lines 16-19.

<sup>2</sup> Id. at page 4, lines 25-29.

<sup>3</sup> U.S. Patent No. 4,579,048 (Stover): col. 3, lines 26-28.

customization of the brewed beverage.<sup>4</sup> Clearly, Applicants' individualized customization is a missing element in Stover '048.

The Examiner further states that Stover '048 discloses a system for preparing a *customized brewed coffee* beverage. [Emphasis added.] Applicants respectfully disagree with the Examiner's contentions. First, nothing in Stover '048, as noted previously, teaches customization. Customization, as defined and taught by Applicants, is a customer's ability to create a cup of coffee according to that user's taste preferences within the brewer itself.<sup>5</sup> Also, Stover '048 provides no teaching or example for brewing coffee, but merely tea. Persons of skill in the art recognize and appreciate the differences and nuances in brew technology between tea and coffee--further, said persons understand that suitable technology to brew a "good" cup of tea is not necessarily suitable to brew a "good" cup of coffee. Thus, it is Applicants' contention that although Stover '048 mentions the brew of coffee, Stover '048 has not in fact taught one of skill in the art how to actually brew coffee in his invention, but rather how to brew tea. Without a specific teaching from Stover '048 regarding the different and varying brew methods for coffee, Stover '048 cannot be properly said to have taught and/or claimed Applicants' invention for the brewing of coffee.

Applicants further contend that although the Examiner asserts a teaching of customization by Stover '048, the Examiner has not provided a basis therefor in the reference itself. Applicants assert that such a contention could only come from the Examiner's personal knowledge and not from Stover '048 itself. Thus, Applicants respectfully request an affidavit from the Examiner attesting to the foundation of his assertion based upon either the Stover '048 reference or other references. If Applicants traverse an assertion made by the Examiner, the Examiner should cite a reference in support of his position.<sup>6</sup> When a rejection is based on facts within the personal knowledge of the Examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the Applicant, by an affidavit from the Examiner.<sup>7</sup> If the Examiner fails to provide a suitable affidavit that bolsters his reasons for rejection herein, the rejection should be withdrawn. Applicants so traverse the Examiner's rejection based upon these grounds.

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<sup>4</sup> Id. at col. 5, lines 57-60.

<sup>5</sup> Applicants' Specification at page 1, lines 12-15.

<sup>6</sup> 37 CFR § 104(d)(2); MPEP 2144.03.

<sup>7</sup> Id.

In view of such personal knowledge by the Examiner, Applicants respectfully request reconsideration and allowance of Claims 1, 4-6 and 9-15 over the Examiner's 35 U.S.C. § 102(b) rejection.

35 U.S.C. § 103 Rejection

Claims 2 and 3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stover '048 as set forth in the office action dated February 12, 2003 (Paper No. 9).

The Examiner asserts that Stover '048 "discloses an apparatus which has the capacity to be used for customizing individual quantities of coffee in certain aspects." The Examiner further asserts that "the substrate used for brewing may be changed in the apparatus." Although the Examiner makes these assertions, he fails to provide evidence thereof within Stover '048 itself or from the knowledge of one of skill in the art to validate his assertions. In fact, without such validation, Applicants believe that the Examiner's assertions which underlie his rejection derive from personal knowledge and therefore inherently unreliable without more.

Thus, Applicants consider the Examiner's assertions to be within his personal knowledge and therefore respectfully request an affidavit that provides one or more references that supports the Examiner's assertions. If Applicants traverse an assertion made by the Examiner, the Examiner should cite a reference in support of his position.<sup>8</sup> When a rejection is based on facts within the personal knowledge of the Examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the Applicant, by an affidavit from the Examiner.<sup>9</sup> If the Examiner fails to provide a suitable affidavit that bolsters his reasons for rejection herein, the rejection should be withdrawn. Applicants so traverse the Examiner's rejection based upon these grounds.

In view of such personal knowledge by the Examiner, Applicants respectfully request reconsideration and allowance of Claims 2 and 3 over the Examiner's 35 U.S.C. § 103(a) rejection.

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<sup>8</sup> 37 CFR § 104(d)(2); MPEP 2144.03.

<sup>9</sup> Id.

**SUMMARY**

The rejections in the Office Action has been discussed and, Applicants believe, the proper arguments have been set forth to address the rejections.

In light of the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal.

Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,

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September 17, 2003

Customer Number 27752